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SPECIAL COUNSEL TO
JEFFREY H. MIMS, TRUSTEE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 06-31859-SGJ-7
JAMES H. MOORE, III,	§	(Chapter 7)
	§	
Debtor.	§	

**TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT
AGREEMENTS PURSUANT TO BANKRUPTCY RULE OF PROCEDURE 9019**

A HEARING MAY NOT BE CONDUCTED HEREON UNLESS A RESPONSE IS FILED WITH THE CLERK OF THE U.S. BANKRUPTCY COURT AT 1100 COMMERCE STREET, ROOM 12A24, DALLAS, TEXAS 75243 BEFORE THE CLOSE OF BUSINESS ON FEBRUARY 18, 2008, WHICH IS TWENTY (23) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED AND A HEARING WILL BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY AND THOSE PERSONS LISTED ON THE CASE SERVICE LIST.

IF NO HEARING ON SUCH NOTICE OR MOTION INITIATING A CONTESTED MATTER IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

JEFFREY H. MIMS, the duly appointed chapter 7 Trustee in the above styled and referenced case (“**Mims Trustee**”), files this *Motion for Order Approving Settlement Agreements Pursuant to Bankruptcy Rule 9019*, as follows:

Background

1. On or about April 5, 2005, The Cadle Company (“**Cadle**”), a creditor of Debtor, filed suit against Defendants James H. Moore, III, Elizabeth Moore, JHM Properties, Inc. and Brunswick Homes, LLC, in Cause No. 05-03271-G, *The Cadle Company v. Brunswick Homes, LLC, et al.*, in the 134th Judicial District Court, Dallas County, Texas (the “**State Court Lawsuit**”).

2. On May 2, 2006, Defendant James H. Moore, III, filed a voluntary chapter 7 bankruptcy case, as styled and referenced above (the “**Case**”). Mims Trustee is the duly appointed chapter 7 Trustee in the Case.

3. On July 5, 2006, Cadle removed the State Court Lawsuit to this Court and the action was assigned the above referenced adversary number (the “**Adversary Action**”).

4. On December 7, 2007, Mims Trustee was substituted in as Plaintiff in the Adversary Action.

5. In the Adversary Action, Mims Trustee asserts several causes of action against Defendants based on reverse alter ego, fraudulent conveyance, and constructive fraud. Defendants filed answers in the Adversary Action and Defendant Brunswick Homes, LLC filed a cross-claim for indemnity against Defendant James H. Moore, III. No counterclaims were filed in the Adversary Action. Defendants denied any and all liability to Mims Trustee.

6. On November 15, 2007, the Court entered its *Memorandum Opinion and Order Denying Brunswick Homes, LLC's Motion for Summary Judgment* (the “**Memorandum Opinion**”) in which considered Mims Trustee’s claims against Brunswick based on reverse corporate veil piercing, fraud, constructive trust, as well as certain defenses asserted by Brunswick in the Adversary Action.

Jurisdiction

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper pursuant to 28 U.S.C. § 1408 and 1409.

Request for Relief/Summary of Settlement

8. The parties have agreed, subject to this Court’s approval, to resolve certain of the disputes by and among them substantially as follows:

- a. Defendants James H. Moore, III, Elizabeth A. Moore, and JHM Properties, Inc. will pay the estate the sum of \$35,000 cash or cash equivalent to fully and finally resolve all issues raised in the Adversary Action.; and
- b. Defendant Brunswick Homes, LLC will pay the estate the sum of \$2,500 cash or cash equivalent to fully and finally resolve all issues raised in the Adversary Action; and
- c. the foregoing payments must be made within ten (10) days of entry of the Order approving the settlement; and
- d. upon receipt of good funds pursuant to the settlement, the Adversary Action will be dismissed with prejudice and the Defendants released from

any and all liability to the bankruptcy estate for the causes of action alleged in the Adversary Action.

Copies of the Settlement Agreements (the “**Settlement Agreements**”) reached with (1) Defendants James H. Moore, III, Elizabeth A. Moore, and JHM Properties, Inc. and (2) Defendant Brunswick Homes, LLC, are attached hereto as **Exhibits “1” and “2”** respectively as if fully set forth.

9. Bankruptcy Rule 9019 governs approval of compromises and settlements. In deciding whether to approve a settlement, the Court should consider: (a) the probability of success in litigation, with due consideration for uncertainty in fact and law; (b) the complexity of and likely duration of the litigation and any attendant expense, inconvenience, and delay; and (c) all other factors bearing on the wisdom of the compromise. *See In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997); *In re Jackson Brewing Company*, 624 F.2d 605, 607 (5th Cir. 1980), *citing*, *Protection Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968).

10. The proposed settlement meets the criteria set forth above. Mims Trustee believes that the Settlement Agreements enable Mims Trustee to avoid costs, expense, and delay attendant to resolving the various causes of action asserted against Defendants, particularly in light of the Memorandum Opinion. The Settlement Agreements are fair and reasonable under the circumstances, particularly given the novel issues of law involving reverse alter ego and the complexity of establishing such causes of action, in light of discovery conducted in the Adversary Action. In speaking with counsel for Defendants, they made it abundantly clear that, in the event the Court ruled against them, appeals would be likely, thereby tying up the litigation for many months if not years to come. Defendants also provided Mims Trustee with certain

financial information which, upon review, Mims Trustee believes presents the possibility that, even should the estate prevail on the relief requested, recovery may be difficult if not impossible to achieve. Mims Trustee further believes that the estate will incur substantial legal fees and other costs attendant to the trial of the Adversary Action and subsequent appeals which will present a burden on the estate in that recovery of such fees and costs by counsel, if approved by the Court, would likely diminish any reasonable distribution to the creditors. The settlements are the result of lengthy negotiations and arms length bargaining and are not the product of fraud or collusion. In sum, the settlements proposed are in the best interests of the creditor of the Debtor, the bankruptcy estate, creditors and parties-in-interest.

WHEREFORE, Mims Trustee requests that the Court enter an Order approving the Settlement Agreements, grant the relief requested herein, and/or grant such other relief to which he may be entitled under the circumstances.

Dated: January 24, 2008.

Respectfully submitted,

BELL NUNNALLY & MARTIN LLP

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SPECIAL LITIGATION ATTORNEYS FOR
JEFFREY H. MIMS, CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was served by electronic submission and/or first class mail, postage prepaid, unless otherwise noted, on the following persons, as well as those listed on the attached Service List, on this 24th day of January, 2008:

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/s/ Bruce W. Akerly

Bruce W. Akerly

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Case No. 06-31859 SGJ7

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